FOR MYSORE STATE

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SERIES.

G.O. No. 4209.

Dated 15-11-1949.

Despatch Abstract.]

Act- Reserve Bank of India Act, 1934- Sundry estates under the A.G.&S.R. Act& Madras- Holding of Shares in the Reserve Bank of India- Assessment to the Act by the Govt. of India- Papers Recorded.

Finance (Ways and Means)

The point raised in this file relates to the legality of the Administrator-General and Official Trustee, Madras holding the Reserve Bank of India Shares in his official capacity on behalf of estates under his administration. The Reserve Bank of India is of the opinion that the Official Trustee cannot hold such shares in his official capacity and has made two alternative suggestions which have been dealt with by the Legal Department in their note at page 3 above.

The file has been sent to the Finance Department apparently because the Reserve Bank are the Bankers of the Provincial Government. This factor seems to have nothing to do with the subject on hand. Finance have therefore no remarks to offer on the subject. The subject "Banking - Conduct of Banking business by Corporations" is generally dealt with by the Development Department. Home may be requested to consult them.

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HOME DEPARTMENT.

The notes of Legal and Finance Departments may be perused. The case may be sent to Development with reference to A above.

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DEVELOPMENT DEPARTMENT.

Notes from p.1 above may read. This department may agree with the views expressed by Legal Department on p.3 above. The file may be returned to Home Department.

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HOME DEPARTMENT.

This file relates to legality of the A.G. and O.T. Madras holding the shares of the Reserve Bank of India in his Official capacity on behalf of the estates under his administration. There are at present 4 estates under the administration of the Official Trustee, in which the assets are partly shares of the Reserve Bank of India and they are vested in him in his official capacity. This departments note at pages 1-2 summarises the case setting out the views held by the Administrator-General and the Official Trustee and the Reserve Bank of India. This department consider that the view taken by the O.T. that there can be no objection to the A.G. or O.T. holding the shares of the Reserve Bank in view of section 5 of the Administrator General's Act and section 6 of the Official Trustees' Act." But Legal are of opinion that the view taken by the Reserve Bank of India that the term "corporation" has been used in section 4.(3) of Reserve Bank of India Act as referring to a commercial corporation constituted under any of the statutes referred to therein, and that it cannot be interpreted to include O.T. and that the O.T. is not therefore qualified to hold the shares of the Bank in his Official capacity. is legally correct. They consider that the only other alternative is to amend the Reserve Bank of India Act, 1934 so as to make the A.G. and O.T. Madras eligible to hold the shares of the Reserve Bank in respect of the estates under his administration. Development Department agree with legal. The Government of India may be addressed as suggested by Legal. A draft letter is submitted for approval.

A above is ~~taken~~ rather a big business. Is it necessary and can any other arrangement be made for the present?

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Please see the query of Secretary at foot on page 5 ante.

The Reserve Bank of India, while holding the view that the Official Trustee is not qualified under section 4 (3) of the Reserve Bank of India, Act, 1934 to hold the shares of the Bank in his official capacity, has, however, suggested that the following two courses are open to him, as succession certificates have been granted to him:-

(i) to transfer the shares in his personal name in which case he will be considered as an absolute owner thereof; or

(ii) to dispose of the shares as provided in Regulation 16 (ii) (b) of the ~~Bna~~ Bank's General Regulations.

The Official Trustee has stated that the first course, namely, transfer of shares in his personal name, will involve a transfer of the shares every time there is a change in the personal of the O.T. It will also involve some cost by way of a stamp duty. As the shares are valuable and yield good dividends, it will not be in the interests of the estates to sell them, as it may result in a loss. It may be noted in this connection that the Government of India are considering the question of nationalisation of the Reserve Bank which is likely to involve amendments to the Act. They may, therefore, be addressed with reference to A on p.5 ante. Pending their decision in the matter, the first course suggested by the Bank-namely, thansfer of shares in the personal name of the Official Trustee may be adopted as there is not likely to be frequent changes in the post of Official Trustee.

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(1) above is not desirable. Address India and we can determine our future ~~course~~ of conduct in the light of their reply.

The draft letter to the Government of India already approved may now issue

The draft may now issue.

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I agree with S. that (i) is not at all desirable for ~~avrious~~ various reasons (e.g.) death of O.T. while in Office(Govt. Of India) But why not adopt the II course of selling the shares. If they are valuable, it will fetch better price.the O.T. can invest it elsewhere.

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(issued as Lr.Ref.No.38956 F/48-3, Home, d/23-9-48.)

The point raised by Hon'ble Minister (Agricultural) at A above may be referred to the Official Trustee . A draft Memo is submitted for approval.

(Issued as Memo.No.38956F/48-4, Home, dated 13-10-48)

or /5...

Home Department.

Official Trustee, Madras - Sundry estates - Shares of the Reserve Bank - Holding of.

Ref: From the O.T. Madras. No.4338, dated 10-5-48 and 4680 dated 21-5-48.

Please see the letters from the Official Trustee, Madras on pages 1-2 and 5 c.f.

2. There are at present four estates under the administration of the Official Trustee in which the assets are partly shares of the Reserve Bank of India and they are vested in him in his official capacity. When he applied to the Reserve Bank to transfer the shares to him and send him the dividends, the Bank has declined to do so on the ground that the Official Trustee is not qualified under section 4 (3) of the Reserve Bank of India Act to hold shares of the Bank in his official capacity. The Official Trustee solicits instructions from the Government as to the course he should adopt and says that if the Act can be got amended so as to enable the Administrator General and Official Trustee to hold the shares, that will solve the problem for the future also.

3. Section 4 (3) of the Reserve Bank of India Act provides that 'xx xx$ xx no person who is not -------- a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any part of His Majesty's Dominions the Government of which does not discriminate in any way against (Indian or Burman subjects of His Majesty) and having a branch in British India (or in Burma) shall be registered as a shareholder or be entitled to payment of any dividend on any share.

Section 6 of the Official Trustees Act provides that the Official Trustee shall be a corporation sole by the name of the Official Trustee of the Province for which he is appointed and as such Official Trustee, shall have perpetual succession and an official seal, and may sue, and be sued in his corporate name. A similar provision exists in the Administrator-General's Act also.

The Official Trustee is of the opinion that in view of section 6 of the O.T. Act there can be no objection to the A.G. or O.T. holding the shares of the Reserve Bank. He has placed this view before the Bank. The Bank, however, holds that the terms 'Corporation' has been used in section 4 (3) of the Reserve Bank of India Act as referring to a commercial corporation constituted under any of the statutes referred to therein and that it cannot be interpreted to include the Official Trustee and that the Official Trustee is not therefore qualified to hold shares of the Bank in his official capacity. The Bank therefore suggests that as the Succession Certificate has been granted to him in his official capacity, the following two courses are open to him:-

(1) to transfer the shares in his personal name in which case he will be considered as the absolute owner there of; or

(2) to dispose of the shares as provided in Regulation 16 (ii) (b) of the Bank's General Regulations.

4. As regards the two courses suggested by the Bank above, the Official Trustee has stated that the first course will involve a transfer of the shares every time there is a change of the incumbent in the post of the A.G. and O.T. and that every such transfer will also involve some cost by way of stamp duty. He considers that the second alternative cannot be accepted as the

p.t.o.

shares are valuable and yield good dividends and that it will not be in the interest of the estates to sell them as it may result in a loss.

5. The Official Trustee doubts the view of the Reserve Bank of India at A above. The view taken by the Official Trustee seems to be correct. If his view is not correct, the A.G. and O.T. Acts will need to be amended for the purpose and legislation will have to be taken by the Central Government.

6. The file may be sent to Legal and Finance departments for remarks.

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LEGAL DEPARTMENT.

Section 4 (3) of the Reserve Bank of India Act, 1934, makes the following categories of corporate bodies eligible for holding shares in the Reserve Bank:-

(1) a company registered under the Companies Act, 1913;

(2) a society registered under the Co-operative Societies Act, 1912 or any other law for the time being in force in British India relating to co-operative societies;

(3) a scheduled bank

(4) a corporation or company incorporated by or under an Act of Parliament or any law for the time being in force in any part of His Majesty's Dominions the Government of which does not discriminate in any way against Indian subjects of His Majesty, and having a branch in a Province of India,

The Administrator-General and Official Trustee are no doubt corporation sole -- see section 5 of Central Act III of 1913 and section 6 of Central Act II of 1913 and are thus corporate bodies in the ordinary sense of the term. But the eligibility of these corporations to hold shares of the Reserve Bank has to be determined with reference to section 4 (3). It is clear that these corporations do not fall under items (1) to (3) above. Nor do they fall under item (4), for that item clearly envisages only corporations incorporated under any law of a Dominion (other than the Indian Dominion) and having branches in an ~~Indian Legislature do not at all come within the scope of item (4) is~~ Indian Province. That corporations incorporated under a law of the Indian Legislature do not at all come within the scope of item (4) is obvious from the references to "the Government of which does not discriminate in any way against' Indian Subjects of His Majesty' and the company "having a branch in a Province of India". The view taken by the Reserve Bank is therefore legally correct.

The question as to which of the two alternatives suggested by the administrator-General and Official Trustee should be adopted is one for the administrative department to decide. The Administrator-General and Official Trustee has pointed out the difficulty in accepting the second alternative, viz. sale of shares. The only other alternative seems to be to amend the Reserve Bank of India Act, 1934. This is a matter for the Central Government. The difficulty felt in this Province would have arisen or is likely to arise in other Provinces also.

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From the Government of India, Ministry of Finance,
No.12218.FI/48, dated 20-10-48.

From the Official Trustee, Madras, No.9626, dated 27-10-48.

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Please see the notes on pp.5-7 ante. With reference to the letter at pp.9-10 c.f., the Govt. of India have stated that in view the nationalisation of the Reserve Bank with effect from 1-1-1949 all shares in the Bank will be deemed to be transferred to the Central Govt. and that it is therefore not necessary to amend the Reserve Bank of India Act. The Govt. of India propose to pay to the shareholders a compensation at the rate of Rs.118-10-0 per share and to pay all the dividends due.

2. With reference to the minute of Hon'ble Minister (Agricultural) at A abe on p-7 ante, the O.T. Madras who was completed in the matter has stated that in view of the fact that the Reserve Bank is to be nationalised shortly, and all the steree shares are to be acquired by the Centalt Central Govt. at about Rs.118/- per share, it is not profitable to sell the shares now in open market which will fetch only Rs.110/- per share.

3. In view of the changed circumstances no action seems called for on the letter of the Official Trustee at pp.1-2 c.f. R as there is no question of holding shares in the Reserve Bank by any body in future.

submitted

4. The file may be sent/to Hon'ble Minister (Agricultural) for perusal with reference to his minute on p.7 above.

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The file relates to legality of the A.G. and O.T. Madras holding the shares of the Reserve Bank of India hi in his Official capacity on behalf of the estates under his administration. The summarising note at p.5. The orders on circulation at pp.6-7 and the further notes on pp.8-9 above may be perused. It is seen from p.23 c.f. that the A.G. and O.T. is aware of the proposal that the Reserve Bank is to be nationalised and all shares are being acquired by Central Govt. at about Rs.118/-. It does not, therefore, seem necessary that any reply need be given to the A.G. to his reference on pp.1-2 c.f. The papers may be recorded for facility of future reference.

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G.O.Ms.No. 4209. Dated 15-11-48.

Act - Reserve Bank of India Act, 1934 - Sundry estates under the Accountant-General and Official Trustee, Madras Holding of shares in the Reserve Bank of India - Assessment to the Act by the Government of India - Papers - recorded.

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SUPERINTENDENT,
Madras Record Office,